

CONDUCT BOARD

June 29, 2004

3:00 PM

The Clerk called the meeting to order.

The Clerk called the roll.

Present: James W. Craig, Thomas R. Clark, Carol B. Resch,
Robert R. Rivard, Toni Pappas, Dennis Smith

Absent: Douglas J. Wenners

Messrs.: Atty. Connor

Deputy City Clerk Johnson advised that the purpose of the meeting is organizational in nature and that nominations are in order to elect a Chair of the Conduct Board.

Mr. Robert Rivard nominated James W. Craig for Chairman.

Deputy City Clerk Johnson called for a motion to close nominations.

On motion of Mr. Rivard, duly seconded by Mr. Clark it was voted to close nominations.

Chairman Craig requested the Clerk to provide a brief overview regarding typical issues addressed by the Conduct Board.

Mr. Rivard stated I have a longstanding relationship with Arthur Beaudry. I remember when he first began campaigning and I was somewhat involved in supporting him in different ways. I am not quite sure that I should take part in this Conduct Board action. I think there may be a problem here so I believe the proper thing to do would be to recuse myself at this time unless someone has some innovative or creative ways for me to circumvent that friendship.

Chairman Craig excused Mr. Rivard from the proceedings.

Deputy City Clerk Johnson stated there are two alternates that were appointed to the Conduct Board – Toni Pappas and Dennis Smith. One was a Mayoral appointment and Doug Weners is not here and the other was the Aldermanic appointment and Mr. Rivard has been recused so my suggestion would be to recognize Toni Pappas and Dennis Smith as filling in.

Chairman Craig recognized alternates Toni Pappas and Dennis Smith as members of the Conduct Board. I will give anyone else an opportunity...I assume everybody has at least glanced at the cast of characters here and if anyone has any reason why they can't be objective in this hearings please let me know. I guess we are all set.

Chairman Craig addressed Item 4 of the agenda:

Referral by Board of School Committee regarding matters of interference by School Committee Member Arthur Beaudry.

Deputy City Clerk Johnson stated I would just note for the record that the Conduct Board typically would address issues referred to it either by the Board of School Committee or by the Board of Mayor and Aldermen. It is established under Charter and the Charter provides the general provisions under which the Conduct Board would provide advice back to those Boards. We have one item that has been referred to the Committee, which is why we requested that the meeting be held.

Chairman Craig stated that is the issue of School Board Member Beaudry. I guess my experience here is that we have had one...this Board had one meeting two or three years ago and we were able to decide from the complaint that there was no reason to bring it forward any farther because it didn't relate to the code. I guess we are playing with a blank slate here. We have to figure out...we are charged with doing an investigation of this complaint against Mr. Beaudry and we have to figure out how we are going to conduct that investigation. I guess that is all we are going to be able to do today. If anyone has any other thoughts...does anybody else want to speak? At this session please feel free to speak up if you have something that you want to add. I was thinking that we ought to, given the nature of these complaints, invite people in. I am not aware that we have any power to subpoena anyone but we can invite people in and ask them to testify either under oath or not under oath and speak their peace. Some of the things I thought about were whether these should be open sessions, if legal advice is available to us and how we are going to run this investigation. I would appreciate any thoughts.

Ms. Toni Pappas asked would it be up to Mr. Beaudry to decide whether it would be public or non-public session.

Chairman Craig answered no.

Solicitor Clark replied Mr. Beaudry would have a right to demand public if we decided to go non-public.

Chairman Craig asked does anyone have any problem with public sessions.

Solicitor Clark stated for myself I think that to the extent possible we ought to keep the sessions public.

Chairman Craig replied I agree. Does anyone disagree?

Ms. Carol Resch stated there is no action requested by us correct. My understanding is that we are just to give an opinion.

Chairman Craig responded as I understand the Charter, yes. We investigate and make some kind of a recommendation to the Board of Mayor and Aldermen or to the School Committee. That is all we have the power to do.

Solicitor Clark replied it is my understanding that we are strictly advisory and are to look into matters referred to us. We are to give an advisory opinion back and that is our authority.

Chairman Craig stated so we agreed that we will have open sessions. Would the Clerk's Office be available to send letters out and things like that?

Deputy City Clerk Johnson responded certainly.

Chairman Craig stated I am just flying by the seat of my pants here. I am thinking about the rules of evidence...you know are people going to be sworn in or are we going to have unsworn testimony? I suppose people are entitled to have attorneys with them. Are we going to allow cross-examination or just questions from the Board? What is your pleasure?

Mr. Dennis Smith asked I assume this will be an administrative hearing. From the looks of things at least reading through this you have a potential 15 witnesses.

Chairman Craig replied I am not sure what you mean by administrative hearing. I guess that is a question. Are we bound by any rules of administrative procedure or anything like that? I don't know.

Solicitor Clark stated I don't think we fall under the Administrative Procedures Act. I do think we are more of an administrative body than a judicial body.

Chairman Craig responded I would agree with that but there is nothing in the code that...

Solicitor Clark interjected there is nothing in the code that tells us how we have to act.

Mr. Smith asked so we don't have any rules that we are operating by.

Solicitor Clark answered just what we adopt here.

Ms. Resch stated so there is no action requested. We are just here to give advice.

Chairman Craig responded as I understand it that is right. The Charter allows for people to make complaints and we are supposed to investigate them and make a recommendation to the School Board I guess.

Ms. Resch asked since we have no authority how long do you think this procedure will take.

Chairman Craig answered my own opinion is that somebody's...complaints have been made against a public official and I think it is probably very important to him that his name...he probably wants to resolve some of these things so I think we owe it to Mr. Beaudry and the School Board to investigate this and do what it takes to get people to come in and say what they want or not come in and say what they want and then we can make a recommendation based on what we heard and what we didn't hear related to the Charter and we have done our job. I think we owe the Charter that much. I hope it doesn't take long but it might.

Ms. Pappas asked do you see 15 or so people coming to a public hearing.

Chairman Craig answered there could be. I looked at the complaint the other day and there are three or four complaints and that is another thing. I don't know if we should break them down or how we are going to break the complaint down in the most expeditious way. Maybe we should try to do just procedurally today get some of these things done and then have a second procedural meeting where we address the complaint and how we are going to go forward. Maybe we ought to just satisfy ourselves with getting some rules down here that we are going to follow and then the next meeting and this is just a thought we could apply them to the complaint – who do we want in, how are we going to break this down?

Complaint by complaint or can we do two complaints at the same time and those kinds of things.

Ms. Resch stated as I see it there is one complaint that the School Board member interfered with the Superintendent running the School District.

Solicitor Clark responded I think the overall theme of the material in the package that was sent to us by the School Board was interference. I think the role of this Board is to determine whether or not there was interference as defined in the Charter. There are several different aspects of what they claim were interference. I think you are going to have one general category of interference but you are going to have subsets of different witnesses and different aspects of it.

Ms. Pappas replied that sounds right.

Chairman Craig stated there were several different incidences. That is what I was saying – if certain people have to be there for one complaint you don't have to drag everybody in. We will try to make it user friendly for ourselves and for the witnesses. Does anybody have any feelings about sworn or unsworn testimony? We talked about open sessions and we should have them as open as we can. I see that we have two jobs. To take the testimony and we feel that that should be open...I guess the way I prefer it is they should be open unless somebody can give us a real good reason why they shouldn't be open. We could consider that. Then we are going to have to do some kind of deliberating and draw up some kind of report at the end with some recommendations. Should that be open to the public or private?

Ms. Resch stated if we are not talking about ruining somebody's reputation the meetings should be open.

Solicitor Clark stated I think we are going to have to play that one by ear. I think we are subject to the Right To Know Law like everybody else so unless there is a reason to have it non-public, it will be public.

Chairman Craig stated that is my feeling too. Like I said unless somebody can give us a reason – legal or otherwise why we shouldn't meet in public the whole thing should be open. On sworn testimony does anyone have any feelings?

Ms. Pappas responded I don't know the advantage of one over the other. As a lawyer maybe you know more?

Chairman Craig stated it supposedly makes the consequences of lying much greater. If you testify under oath and you lie you are committing perjury. I don't know if that is true in front of this Board or what that is worth but personally if somebody comes in here and they are going to testify about what happened I don't see why it couldn't be done under oath. Do we have any problems with a quorum?

Deputy City Clerk Johnson responded no you have a quorum today. You would require a quorum any time you meet.

Chairman Craig stated and the question of legal advice, since we have the City attorney sitting here as a member...

Solicitor Clark interjected I am not going to be able to give the Board legal advice. I am a Board member and nothing else. There is a possibility we could set up a wall in the office and have one of the attorneys not involved but I would prefer not to do that. If it gets to the point where we need legal advice we have some firms that could provide it.

Chairman Craig asked so are you willing to play it by ear for now.

Solicitor Clark answered I think we are going to have to unless you want to contact the firms now to see if they could provide legal advice to us.

Ms. Resch asked do you want to get legal advice for an opinion. There are only two people involved here – the Superintendent and Arthur Beaudry.

Chairman Craig answered I can't think of any reason off the top of my head. I am just trying to bring up as many things or as many eventualities that may occur as I can. Tom and I are both lawyers so we can at least wing it for now.

Solicitor Clark stated I think if it comes to the point where we really feel we need advice we could take a recess and find someone.

Chairman Craig stated one thing that occurred to me is we may like to see some documents as we go along. I don't know if there are any job descriptions for instance for School Board members and what they can and cannot do other than what is in the Charter. I guess we can just ask for that and if people produce them they do and if they don't...

Solicitor Clark interjected to my knowledge the only thing we have is the Charter itself and the rules of the Board. There may be an ordinance also.

Chairman Craig asked can we make a request from whomever to get the rules of the School Board. It might be helpful.

Deputy City Clerk Johnson answered we can request that for you.

Solicitor Clark stated I know we are just setting up procedures here but if Mr. Beaudry feels there is something else we should look at in way of the rules of the Board or the laws he should let us know.

Atty. Jim Connor stated I am a lawyer in the City and I represent Mr. Beaudry and we have discussed the upcoming events. I have just a few thoughts about it that may be of some assistance. There apparently are no sanctions if you ruled...if this was a you know 10-0 or 5-0 finding there is nothing that can be done with Mr. Beaudry except possibly some sort of censure but he is entitled to return to the ballot box and run as many times as he wants. Of course his name has been kind of dragged through the mud here and he wants to get it cleared up. What I would request is this. That you decide what is the burden of proof? Is it by a preponderance of the evidence or is it less than that or whatever? The other thing is because it was just generally referred by I guess the Mayor are these allegations that we stand here today on or are they findings by the School Board. I suspect that they are merely allegations and, therefore, require some sort of fact finding and we would like to have a cross-examination. I think, though, that you might strive to maintain your sanity if you ask the School Board or the School authority or whatever it is called to provide a witness list on the allegations that have been made. What we have done is we have for our own internal purposes set this out by a paragraph and prepared a response to it so that if we did this seriatim we might just say all right allegation #1 School Board what is your evidence, put your witnesses on, have them sworn and we are entitled to cross-examine and then we are entitled to testify and or call witnesses of our own. We would be willing to share with you the names of the witnesses ahead of time. There are some baroque for lack of a better word, rules and customs within the School Department, which I don't think anybody except maybe Carol Resch is familiar with. There are unwritten rules like you can't be a coach and a teacher and things like that. It is not in writing but it is sort of a long-standing custom. Most importantly that the School Board or whoever is the real accuser in this proceeding recite and define what interference Arthur Beaudry caused. What did he do that interfered with the duties of a school official? We would like to know ahead of time what his burden is. Under the case of Quinn vs. Concord 108.242, which by the way had a provision for removal of City Council and so forth the Supreme Court has said that we are entitled to a fair hearing and the right to examine witnesses. We also invoke our right of free speech under Part I, Article 22 of the NH Constitution. Also for your general reflection as that horrible case of Hillsborough vs. Beaulieu

in which a county commissioner in 113 NH 69 built an apartment for his girlfriend and took other things for the county and was allowed to stay in office. I don't know if that is helpful to you, but thank you. I might also add that I have a couple of jury trials going on and Mr. Beaudry has a vacation coming up so we would ask that if possible we begin these hearings in the middle of August.

Ms. Resch stated we are not a jury. We have to decide what the parameters are.

Chairman Craig responded I agree but on the other hand I am thinking of Mr. Beaudry and his name is involved so I am trying to...I don't know what the balance here is. We are an administrative body and I don't know what our duty is. I haven't read those cases that Atty. Connor cited but I hear your point. The rules of evidence certainly don't apply here. Within reason I guess if we have a witness list we can call them in. Testimony under oath and how do people feel about cross-examination. I kind of loathe the thought of everyone coming in here with their own lawyer and allowing cross-examination. That makes me nervous. Any thoughts?

Mr. Smith stated I think to be fair we definitely have to have input from both sides. We have a complaint that was made and Mr. Beaudry has a right to bring in his own witnesses so what Atty. Connor suggested we legitimate as far as I am concerned. We can contact the Administration and have them prepare a list for the School Board side of it and Atty. Connor can give us a list of the witnesses acting in Mr. Beaudry's behalf. Let's listen to the testimony and then draw our own conclusions.

Chairman Craig responded I agree it is a good idea if we can narrow the issues that the parties have and I think the witnesses is a good idea but I was thinking this is like the impeachment all over again. What happened there was they had lawyers. There were two sides so there were two lawyers that could cross-examine and do a direct exam and the Senate was allowed to ask questions on top of that. I guess our options are we can ask questions without attorneys asking questions. They can be present but there will be no cross-examination by attorneys or we can allow attorneys to cross-examine but I guess that would require getting somebody for the City side. If we want to set-up two attorneys to do that I guess we could do that or we could just ask questions. What do you think?

Ms. Pappas stated my inclination is like yours to not have cross-examination. To have witnesses from both sides and have us ask questions. There might be some dialogue back and forth but I think that would be enough. Although it is hard to predict what would happen it would seem to me that that might work, that process might work.

Chairman Craig asked does anyone else have thoughts on cross-examination.

Solicitor Clark stated from what I have read so far in this package that everybody has received it appears that the main complainant is the Superintendent. I do agree with Atty. Connors that we should get the allegations more firmly defined so we know what the interference is and we should have them provide us with a witness list. Once the allegations...I agree with Atty. Connors also. I read the allegations and they are allegations and not findings. Once the allegations are defined then we can decide whether or not cross-examination is needed. I know it tends to make the process longer. It does involve more attorneys but sometimes you have to go that route.

Chairman Craig stated you could feasibly end up with five or six attorneys, each representing one witness and this could last...

Solicitor Clark interjected I think that is why we have to get the allegations defined. It may just be that the Superintendent has to come in.

Chairman Craig stated at this point I am thinking that the best way to handle it is anyone who wants to have their own attorney present while they testify is welcome to have that and if there is any privilege or any other issue the attorney can address that but I agree with Commissioner Pappas that we should just question the witnesses after they testify. I don't think we are going to have testimony at the next meeting so maybe we ought to look at some of the cases that Atty. Connor cited and see if there is any legal reason we have to. We can leave that.

Ms. Resch stated our role is to provide a recommendation and that is not legally binding. They should both have their say and be specific about the allegations and we should allow rebuttal by Arthur Beaudry. Not everyone should bring in an attorney. It would be too cumbersome a process when our decision is non-binding.

Chairman Craig stated but we are talking about people's reputations here and people can say anything about anyone. I can see the concern about...no one has ever lied under oath? I guess I am just not comfortable to make a decision on that but that is the way I am heading. I think we are going to lose control if we have five or six lawyers in and allow cross-examination by each lawyer but maybe we can save that one decision for the next meeting. Burden of proof...I am glad you brought that up Atty. Connor. I had forgotten about that. It seems to be the civil burden of proof, preponderance of the evidence, whatever that means. It is certainly not a criminal burden of proof here.

Solicitor Clark stated it is certainly not a criminal burden of proof.

Ms. Resch could we get a clear definition of the role of the School Board and the role of Administration.

Chairman Craig responded I agree and that is why I asked if we could get documents of what the School Board's role is, etc. Those are all of the preliminary issues I had. If anyone else can think of anything that we need to talk about, please do.

Solicitor Clark stated I do think we ought to ask the School Administration to provide us with the specifics of the allegations.

Chairman Craig stated I was going to ask the Clerk to prepare something for us on the rules that we have agreed on today.

Deputy City Clerk Johnson responded yes it is pretty simply so far.

Chairman Craig replied right but if somebody doesn't write them down...the next part is a request for allegations or...

Solicitor Clark interjected I think we ought to ask the Administration to narrowly define their allegations and come up with the specifics of what the actual interference was that violated the Charter. The Charter as I read has a section of non-interference, which says that individual members of Boards cannot interfere with acts of officials. Our role is to investigate or look into complaints that the Charter has been violated.

Ms. Pappas asked and give our opinion one way or the other.

Chairman Craig answered yes. You can ask for the witness list as well and can we request that we have a representative from the School Board here next time.

Deputy City Clerk Johnson asked the School Board or the School Department.

Chairman Craig answered I have to think about that for a minute.

Deputy City Clerk Johnson stated the School Board is the one that acted to refer the matter here.

Solicitor Clark stated it was brought up by the Superintendent and the Mayor but referred here by the full School Board.

Chairman Craig stated I think if they have a stake in this issue they ought to have someone here so they know what the ground rules are going to be. I think at our next meeting we will have a firmer grasp on what we are doing and then we can set-up an evidentiary hearing and we will be able to tell people at least within reason what they should be looking to expect when they get here.

Deputy City Clerk Johnson asked so we would request School Board representation at the next meeting.

Chairman Craig stated someone to be here at our next meeting, which will be another procedural meeting with the intent that the meeting after that will be evidentiary in nature. Does anyone else have any issues that they think we should discuss at this time? How about our next meeting date? How do we go about that?

Deputy City Clerk Johnson stated as I understand it you don't want to set the next meeting until August.

Atty. Connor stated I don't believe we need to be here for the next procedural meeting.

Deputy City Clerk replied I just presumed you might want to be. We could schedule something in the next two weeks and try and work it out and notify everybody.

Atty. Connor suggested that the meeting be held in the evening.

Deputy City Clerk Johnson responded we can schedule night meetings if the Committee wants.

Chairman Craig asked how about if we do the next one during the daytime.

Deputy City Clerk answered we will set-up a 3 PM time at the convenience of the Chair. How is that?

Chairman Craig replied great.

Mr. Smith asked what date is Atty. Connors looking for in August for the hearing.

Atty. Connor answered it is going to take time to get the information from the School Department and time to look it over and we want the same process so you are probably looking at three weeks to a month. I don't know how quickly the School Department can get the information to you.

Chairman Craig stated that doesn't affect our next procedural meeting anyway.

There being no further business, on motion of Solicitor Clark duly seconded by Carol Resch, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee